

WRWX(FM)

SANIBEL, FLORIDA

MAP SHOWING PERMISSIBLE SITE AREA
FOR CHANNEL 253A AT SANIBEL, FLORIDA

OCTOBER 1991

MOFFET, LARSON & JOHNSON, INC.

EXHIBIT 3

26° 45'

WXKT(FM)
SEPERATION ARC

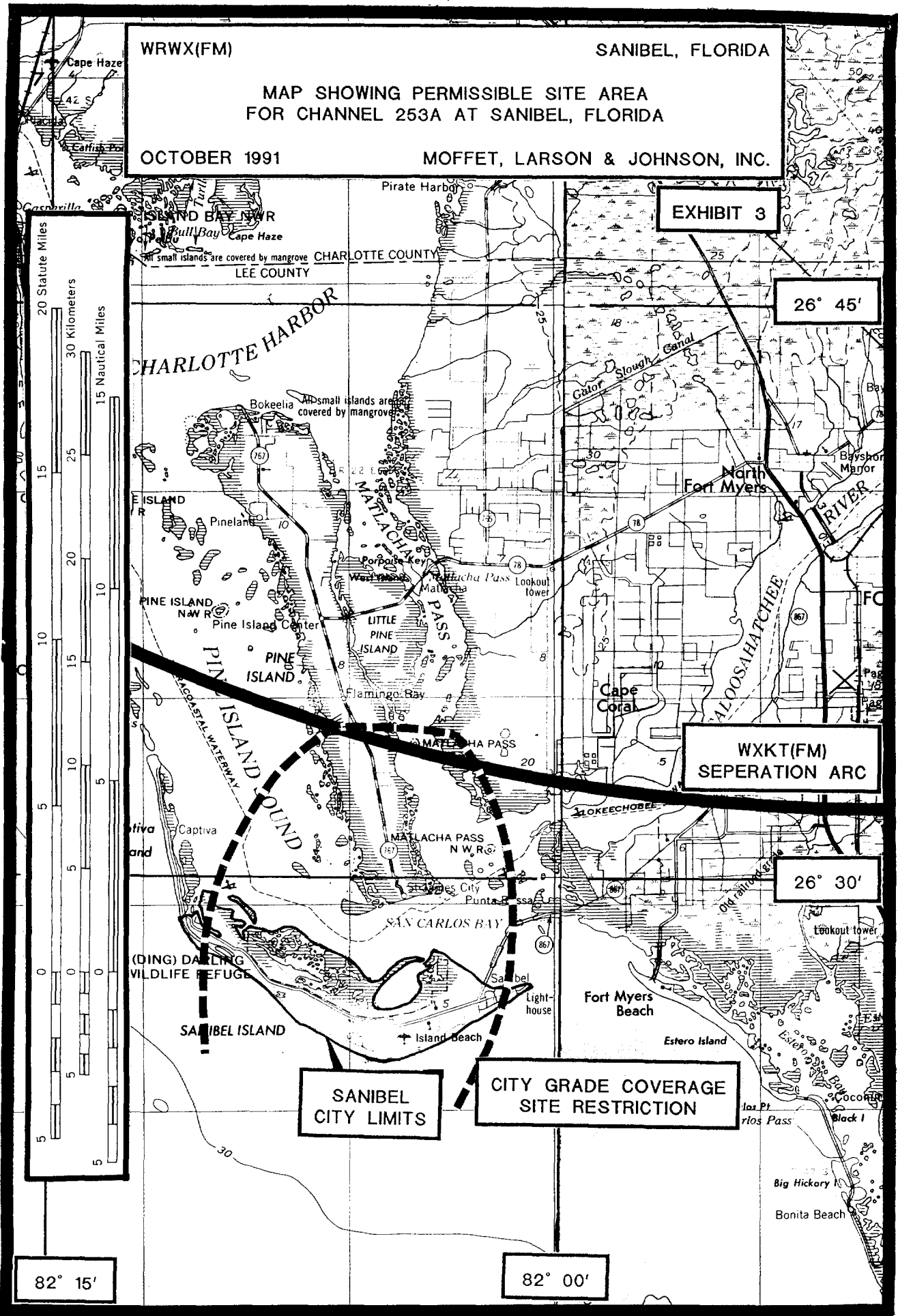
26° 30'

SANIBEL
CITY LIMITS

CITY GRADE COVERAGE
SITE RESTRICTION

82° 15'

82° 00'



MOFFET, LARSON & JOHNSON, INC.

5203 LEESBURG PIKE

CONSULTING TELECOMMUNICATIONS ENGINEERS

FALLS CHURCH, VA 22041

Ruth Communications Corp.
Sanibel, Florida

A F F I D A V I T


COUNTY OF FAIRFAX)
) SS:
COMMONWEALTH OF VIRGINIA)

MICHAEL B. DEGITZ, being duly sworn upon oath deposes and says:

That he is corporate secretary of the firm of Moffet, Larson & Johnson, Inc., consulting telecommunications engineers;

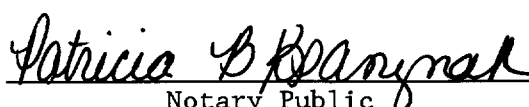
That this firm has been retained by Ruth Communications Corp. to prepare this engineering statement;

That he has either prepared or directly supervised the preparation of all technical information contained in this engineering statement; and that the facts stated in this engineering statement are true of his knowledge, except as to such statements as are herein stated to be on information and belief, and as to such statements he believes them to be true.



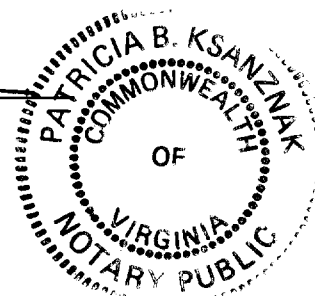
Michael B. Degitz

Subscribed and sworn to before me this 21st day of October, 1991.



Notary Public

My Commission expires March 31, 1995.



MOFFET, LARSON & JOHNSON, INC.

5203 LEESBURG PIKE

CONSULTING TELECOMMUNICATIONS ENGINEERS

FALLS CHURCH, VA 22041

Ruth Communications Corp.
Sanibel, Florida

A F F I D A V I T

COUNTY OF FAIRFAX)
) SS:
COMMONWEALTH OF VIRGINIA)

MARIANNA WOODSON COBB, being duly sworn upon oath deposes and says:

That her qualifications are a matter of record with the Federal Communications Commission;

That she is a professional engineer registered in the Commonwealth of Virginia and the District of Columbia and is the corporate treasurer of the firm of Moffet, Larson & Johnson, Inc., consulting telecommunications engineers;

That this firm has been retained by Ruth Communications Corp. to prepare this engineering statement;

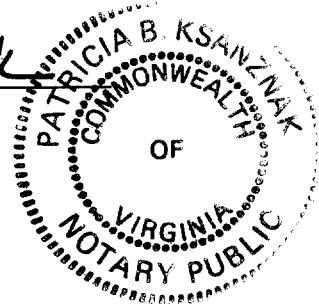
That she has either prepared or directly supervised the preparation of all technical information contained in this engineering statement; and that the facts stated in this engineering statement are true of her knowledge, except as to such statements as are herein stated to be on information and belief, and as to such statements she believes them to be true.

Marianna Woodson Cobb
Marianna Woodson Cobb

Subscribed and sworn to before me this 21st day of October, 1991.

Patricia B. Ksanznak
Notary Public

My Commission expires March 31, 1995.



ENGINEERING EXHIBIT
SUPPORTING A
PETITION FOR RULE MAKING
BY
RUTH COMMUNICATIONS CORP.

October 21, 1991

MOFFET, LARSON & JOHNSON, INC.

5203 LEEBURG PIKE

CONSULTING TELECOMMUNICATIONS ENGINEERS

FALLS CHURCH, VA 22041

Ruth Communications Corp.
Sanibel, Florida

ENGINEERING STATEMENT

This Engineering Exhibit supports a Petition for Rule Making by Ruth Communications Corp., permittee of a new FM station (BMPH 900731IB) at Sanibel, Florida, to modify the FM Table of Allotments. Ruth Communications Corp. proposes to substitute Channel 253A at San Carlos Park, Florida for Channel 253A at Sanibel, Florida.

Exhibit 1 is an allocation study for Channel 253A run from the reference coordinates N 26° 30' 02" W 81° 54' 16". These reference coordinates are located approximately five kilometers northwest of San Carlos Park, Florida. As shown on Exhibit 1, the reference coordinates are short-spaced to the licensed coordinates of WCOO(FM), Channel 252A, Immokalee, Florida. In MM Docket No. 88-608 the Commission substituted Channel 221A for Channel 252A at Immokalee, Florida. No distance separation is required between Channel 253A at San Carlos Park and 221A at Immokalee.

San Carlos Park is a Census Designated Place located in Lee County, Florida. San Carlos Park is located approximately 19 kilometers east of Sanibel. The 1990 U.S. Census population of San Carlos Park is 11,785. No aural services are presently licensed to San Carlos Park. The 1990 U.S. Census population of Sanibel is 5,468.

Exhibit 2 shows the 3.16 mV/m contour for a maximum Class A facility at the above reference coordinates and the limits of San Carlos Park. As shown on Exhibit 2, 70 dBu service would be provided to all of San Carlos Park.

The following four stations will provide 3.16 mV/m coverage to Sanibel.

WCVU(FM) Naples, Florida
WRXK(FM) Bonita Springs, Florida
WINK-FM Fort Myers, Florida
WAKS(FM) Cape Coral, Florida

In addition, the following two stations will provide 1.0 mV/m coverage to Sanibel.

WHEW(FM) Fort Myers, Florida
WAVV(FM) Marco, Florida

Exhibit 3 shows the permissible site area for Channel 253A at Sanibel. This site area is primarily defined by the requirement to provide 70 dBu service to Sanibel. No towers capable of supporting an FM broadcast antenna area located within the permissible site area shown on Exhibit 3.

DECLARATION OF RUTH H. RAY

I, Ruth H. Ray, President and sole voting shareholder of Ruth Communications Corporation ("Ruth"), permittee of WRWX(FM), Sanibel, Florida, and General Manager of WRWX(FM), make this declaration to explain the efforts undertaken by Ruth to construct and operate an FM radio broadcast station at Sanibel, the impossibility of constructing an FM tower that would provide the required city-grade signal over Sanibel, and the advantages of substituting San Carlos Park for Sanibel Island and modifying the construction permit of WRWX(FM) to Channel 253A at San Carlos Park.

1. I have been President and sole voting shareholder of Ruth since 1983¹. Ruth has been the permittee of WRWX(FM) since September 1986, when the Commission granted Ruth the construction permit for WRWX(FM). For over eight and one-half years I have exerted every effort to construct and operate an FM radio broadcast station at Sanibel, Florida. Because of events beyond my control, I have found it impossible to construct an FM station on Channel 253A at Sanibel.

2. In 1983 I filed an application as a corporation (Ruth) for a construction permit for a new FM station at Sanibel, Florida. In 1985 a comparative hearing was held and on March 10, 1986, the Presiding Judge granted Ruth the construction permit.

¹ Hillebrand Broadcasting, Inc. ("Hillebrand"), the predecessor corporation to Ruth, filed the original application for WRWX(FM). I was the sole voting shareholder of Hillebrand. In order to avoid any confusion, references to Ruth prior to April 1989, also refer to Hillebrand.

On September 24, 1986, the Commission issued Ruth a construction permit.

3. In September 1986 I anticipated commencing construction on the new station shortly and looked forward to being on the air as soon as possible. Unfortunately, Punta Ybel Communications ("Punta Ybel"), a competing applicant in the Sanibel proceeding who the Commission dismissed for failure to prosecute its application, filed a series of appeals of its dismissal. When the Commission granted me a construction permit, it stipulated that the grant would not be finalized until Punta Ybel's pending application for review was resolved. See Exhibit 3. However, because Punta Ybel's application had never been considered on its merits, I believed that proceeding with construction while the litigation was still pending would have entailed substantial, and unacceptable, risk. Accordingly, I did not feel it prudent to construct WRWX(FM) until Punta Ybel had exhausted its appeals. Punta Ybel continued its unsuccessful fight to the U.S. Court of Appeals for the District of Columbia. That court denied Punta Ybel's petition in June 1988 and the decision became final in September 1988. The Commission did not issue Ruth a final construction permit until September 1988.

4. I originally specified a tower site in 1983 in an area called "Sanibel Gardens" on Sanibel Island. I selected the site after I had several discussions with Bruce Rogers, the Planning Director for Sanibel. Mr. Rogers advised me that from the Planning Commission's perspective, Sanibel Gardens was the

only location for Ruth's proposed tower acceptable to local zoning authorities. Mr. Rogers informed me that a cable television tower was already located at Sanibel Gardens. At that time Sanibel did not have the same zoning regulations that are in effect today restricting construction of an FM tower.

5. Approximately 43% of Sanibel Island is a wildlife refuge for turtles, eagles, and other protected wildlife. Between the time that I filed my application and Punta Ybel exhausted its appeals in September 1988, the City of Sanibel declared the Sanibel Gardens area as environmentally sensitive wetlands and began buying the property to add to their conservation area. This eliminated the possibility of building the tower on the originally proposed site.

6. In August 1988 I met with the members of the Sanibel Planning Commission regarding a special use permit for a tower on an alternative site in Sanibel. I was informed that the State of Florida had required each incorporated city and all counties to submit to the state a 20-year plan on how that city or county intended to accommodate growth. I discussed with local officials what location on Sanibel Island would be most likely to receive expeditious approval. I also contacted several real estate agents about the availability of specific sites.

7. Because this plan was in the process of being written, the City of Sanibel could not schedule hearings for special use permits. After the plan was completed and submitted to the appropriate state authorities, the State rejected the plan

in April 1989 and the plan had to be modified and resubmitted to the state. The State of Florida finally approved Sanibel's 20 year plan in February 1991. See Exhibit 4. During this time the City of Sanibel would not accept any applications for special use permits to build a tower on Sanibel Island. After the State of Florida approved the 20-year plans for the City of Sanibel, I met with Mr. Bruce Rogers, Planning Director of the City of Sanibel, who informed me that a radio broadcast tower/antenna is not a permitted use in any of the city's zoning districts. Because of these zoning restrictions during and after the acceptance of Lee County and Sanibel's 20-year plans, potential locations for an FM tower site, including Sanibel Island, Pine Island, and the mainland in Lee County, are more difficult to locate.

8. Because the City of Sanibel was unable to approve a site on Sanibel Island, I considered Pine Island for a suitable location for an FM tower. Since there were two FM towers already located on Pine Island, I immediately looked into the possibility of those sites. However, my engineer found that they were both located too far north and both locations were short-spaced to WXKT(FM) in Arcadia, Florida, thereby eliminating the possibility of leasing space on either tower.

9. In June 1989, I met with a real estate agent on Pine Island to explore whether a site on that island would be acceptable. My agent found a site that seemed acceptable, and I made an offer for the property, subject to FCC, FAA, and zoning approval. I placed a deposit on the property, which was accepted

on June 28, 1989. On the same trip I retained counsel to represent me before the Lee County Zoning Board to obtain approval. I also hired a survey company to survey the property.

10. On August 1, 1989, my consulting engineer advised me that my proposed site on Pine Island would not fully comply with the Commission's spacing requirements because of a proposed upgrade for WXKT(FM) at Arcadia, Florida. Consequently, I advised my real estate agent that it appeared that FCC approval would be not forthcoming, requested the agent to locate a new site, and to cancel the offer on the property which was then under option to Ruth.

11. On August 10, 1989, the agent located a site which appeared to meet my needs. However, that site was not listed for sale but was being held in trust as part of an estate. The agent called the attorney for the estate, who agreed to present an offer to the heirs. I placed a deposit in escrow, subject to acceptance of an offer by August 24, 1989. That date passed with no response from the heirs.

12. Two weeks later, my engineering consultant informed me that a change in the Commission's Rules in the Second Report and Order, 4 FCC Rcd 6375 (1989), would permit me to operate from the original Pine Island site using 6 kilowatts and a directionalized antenna, consistent with the newly adopted spacing requirements. On October 2, 1989, I filed an application to modify construction permit to specify a site on Pine Island with six kilowatts, with a directional antenna. Because of a

change in the reference point for the allocation at Arcadia, Florida, I subsequently filed an application for modification specifying nondirectionalized operation at the Pine Island site.

13. After locating this suitable site on southern Pine Island, I entered into an agreement to purchase 10 acres of property on which to construct an FM tower. After months of waiting, I received approval from the Federal Aviation Administration ("FAA") for the new site on March 1, 1990. I retained an environmental consultant to obtain a special use permit to start construction. Unfortunately, In June 1990 an eagle's nest was discovered on Pine Island 1300 feet from my proposed tower site. I immediately began working with local and federal officials to assure officials that operation of Ruth's proposed tower would not interfere with the eagle's nest and to resolve to their satisfaction any potential environmental problems.

14. I first met with representatives of the Eagle Technical Advisory Board ("Advisory Board"), a local organization having jurisdiction over activities and construction within 750 feet of an eagle's nest. While my proposed tower was more than 750 feet from the eagle's nest, my concern over potential environmental problems prompted me to work with the Advisory Board. At a meeting with the Advisory Board in August 1990, they voiced their concern regarding the hazard of a tower to the birds' flight patterns. I offered to take any additional steps necessary to protect the eagles, including lighting the tower

with strobe lights, marking the guy wires, applying iridescent paint to the tower, or hanging streamers from the guy wires in order to alert the eagles to the tower. I left my first meeting with the Advisory Board encouraged that we could work out a solution which would both protect the eagles and enable me to construct an FM tower.

15. Because my tower was more than 750 feet from the eagle's nest, the tower fell under the jurisdiction of the Florida Game and Fresh Water Fish Commission ("Florida Commission"). On August 22, 1990, the Florida Commission rejected my proposed tower, concluding that the tower posed a threat to the eagles. See Exhibit 5. On September 11, 1990, I requested the Florida Commission consider my August proposal to the Advisory Board as a possible solution to the matter. See Exhibit 6. On September 26, 1990, the Florida Commission rejected this offer. See Exhibit 7. On October 4, 1990, I offered to construct a free-standing tower (at three times the cost of a guyed tower) to alleviate any danger to the eagles. On October 16, 1990, the Florida Commission rejected this offer. See Exhibit 8.

16. The Florida Commission requested that any tower I constructed be at least one mile from any eagle's nest. This would place the tower outside both the primary and secondary zones as defined by the habitat management guidelines for bald eagles in the southeast region. Any attempts to relocate my site on available land one mile from the first eagle's nest placed me

within one mile of another eagle's nest. Pine Island is one of the largest refuges for eagles in Florida. The location of eagle nests on Pine Island and the restriction imposed by the Florida Commission precludes me from constructing an FM tower on Pine Island. The Florida Commission recommended I build my tower east of I-75 or preferably lease space on an existing tower. There are many varieties of endangered species, in addition to the bald eagle, all along the shore of Western Lee County and the Florida Commission would prefer to limit the number of new towers because of the hazard to the birds' flight patterns. I cannot locate a tower in Eastern Lee County as the Florida Commission recommends, as it is too far away to provide the required city-grade signal over Sanibel as mandated by the FCC's Rules.

17. At this juncture the only remaining option was to consider any existing structures that would provide the required city-grade signal over the community of Sanibel. Two such towers were investigated. One tower was the cable television tower located in Sanibel Gardens and owned by Palmer Cablevision; the other was the Beasley tower from which WRXK(FM) transmits.

18. The cable tower, which is grandfathered, already includes several existing antennas and could not support any further weight, as it must withstand a wind load of 130 miles per hour. In addition, an FM antenna on a cable tower at a cable head end would cause interference to cable subscribers. Because of these problems, Palmer Cablevision will not permit me to construct and operate an FM antenna on their tower.

19. The Beasley tower is located on the mainland in Lee County near Route 41 and west of I-75 by approximately three miles. Our engineer determined that the Beasley tower could not provide an adequate signal over Sanibel as required by the Commission's Rules and, therefore, could not be considered.

20. Finally, I again approached Mr. Bruce Rogers, the Sanibel Planning Director, for authority to construct an FM tower on Sanibel Island. Mr. Rogers informed me that the zoning laws allowed no such options. See Exhibit 12.

21. Given the impossibility of constructing an FM radio station on Channel 253 at Sanibel, I began looking for alternative solutions. Relocating to another community was the only viable option --- indeed, the only option --- which would permit me to provide FM radio broadcast service to a portion of Sanibel.

22. San Carlos Park is an ideal solution. Space on an existing tower (the Beasley tower) can be leased, as recommended by the Florida Commission, eliminating the environmental problems encountered in the past. This tower site provides adequate signal over San Carlos Park. San Carlos Park is recognized by the U.S. Census and has over 5,000 housing units and over 11,700 residents. In addition, San Carlos Park, which was established approximately 20 years ago, has its own fire department (with two fire stations), sheriff's department, and two elementary schools (San Carlos Elementary and Three Oaks Elementary), both designated as emergency public shelters. San Carlos Park has

numerous community and civic organizations, including the San Carlos² Civic Association (which has constructed a community recreation complex with pool, playground equipment, and ball fields, as well as a building for community meetings and activities), branches of Kiwanis, Optimist and Rotary Clubs, a VFW Post and Auxiliary, and senior citizens groups. Southwestern Regional Airport serves San Carlos Park and is only five miles away.

23. San Carlos Park also contains child care centers, physicians and dentists, accountants, insurance, and real estate services, several banks, grocery, drug, and other retail stores and restaurants. There is a local cab company and churches of many different denominations are located in San Carlos Park.

24. Among the businesses that identify themselves with the name of San Carlos Park are: San Carlos Air Conditioning & Heating, San Carlos Beauty Salon, San Carlos Car Wash, San Carlos Child Care, San Carlos Chiropractic, San Carlos Christian Church, San Carlos Enterprises, San Carlos Golf Club, San Carlos Inn, San Carlos Insurance Agency, San Carlos Interiors, San Carlos Lawn Equipment, San Carlos Liquors & Lounge, San Carlos Little League, San Carlos Marina, San Carlos Medical Center, San Carlos Park Alliance Church, San Carlos Park Cab, San Carlos Park Fire District, San Carlos Park RV Sales & Service, Inc., San Carlos Professional Center, San Carlos RV Trailer Park and Islands, San

² There is no San Carlos separate from the San Carlos Park. All references to "San Carlos" are in fact to "San Carlos Park".

Carlos Realty, Inc., San Carlos Septic Tank Service, San Carlos Day Care, San Carlos Park Animal Hospital, McDonald's of San Carlos Park, San Carlos Estate & Pawn Shop, San Carlos Barber Shop, Domino's Pizza-San Carlos Park, San Carlos Tae Kwon Do, and San Carlos Travel. See Exhibit 13 & 14. San Carlos Park is also a major exit on interstate highway I-75. See Exhibit 15. San Carlos Park currently is under consideration as the site of a new university. See Exhibit 16.

25. Approximately 60% of the population of Lee County live in unincorporated areas of Lee County such as San Carlos Park. See Exhibit 17. These communities include Ft. Myers Villas, Punta Rassa, Bonita Springs, and Lehigh Acres, each of which has received an allotment for FM radio broadcast stations. The only incorporated cities in Lee County are Cape Coral (the largest), Ft. Myers, and Sanibel.

26. San Carlos Park has a year around population of 11,785 while Sanibel's permanent population is 5,468. Unlike Sanibel, which is a primary vacation/tourist area with 43% of the land preserved as a wildlife sanctuary, and a great number of hotels and time-sharing condominiums, San Carlos Park is a community of permanent residents, raising their families in San Carlos Park and working in Lee County.

27. The 11,785 residents in San Carlos Park support two elementary schools (each with 1,000 students) and together with Estero and Three Oaks elect a representative to the Lee County Commission, the representative body for the unincorporated

portions of Lee County. Punta Rassa, Ft. Myers Villa, Bonita Springs, and Lehigh Acres also elect a representative to the Lee County Commission.

28. San Carlos Park is served by three newspapers, the Southside, published monthly, the Bonita Banner, published twice weekly (Wednesday and Saturday) and serving San Carlos Park, Estero, and Bonita Springs, and the Ft. Myers News Press has a weekly insert addressing the concerns of San Carlos Park and other small unincorporated communities. See Exhibits 14, 16 & 20.

29. I have been extremely diligent for the past eight and one-half years, attempting to provide first broadcast service to Sanibel, but have been thwarted by forces beyond my control. I remain ready, willing, and anxious to provide such service but at this point the combined concerns of the local, state and federal authorities regarding aviation, environmental, and zoning concerns make it impossible for me to provide service at Sanibel.

30. I have expended over \$250,000 in my efforts to construct a radio station at Sanibel. I have left my job of 22 years as Vice President and General Manager of WMHE(FM), Toledo, Ohio, to move to Florida to construct and operate an FM radio broadcast station in Sanibel.

31. In the event the Commission allots Channel 253A to San Carlos Park and modifies the construction permit of WRWX(FM) accordingly, Ruth will apply for and construct an FM radio broadcast station on Channel 253A at San Carlos Park.

32. My efforts to provide first local FM radio broadcast service to Sanibel has been exemplary. As my declaration demonstrates, I have left no stone unturned in my

attempts to find a suitable location for an FM tower or to operate on an existing tower. But events beyond my control have made it impossible for me to provide service in Sanibel. Allotting Channel 253A at San Carlos Park, deleting Channel 253A at Sanibel, and modifying the construction permit of WRWX(FM) accordingly will permit me to provide FM broadcast service as I have strived to do these past eight and one-half years.

I have read the foregoing consisting of 13 pages and reviewed Exhibits 3 through 20 and declare under the penalty of perjury that the foregoing is true and correct to the best of my knowledge, information, and belief.

Executed this 22 day of October, 1991.


Ruth H. Ray



PUBLIC NOTICE

FEDERAL COMMUNICATIONS COMMISSION
1919 M STREET N.W.
WASHINGTON, D.C. 20554

315

News media information 202/254-7674.

Recorded listing of releases and texts 202/632-0002.

REPORT NO. 19917

BROADCAST ACTIONS

OCTOBER 24, 1986

STATE	FILE-NUMBER	CALL-LETTERS	APPLICANT + LOCATION	NATURE OF APPLICATION
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THE COMMISSION, BY ITS MASS MEDIA BUREAU, TOOK THE FOLLOWING ACTIONS EFFECTIVE ON THE DATES SHOWN

ACTION OF : SEPTEMBER 24, 1986

FL BPH	-830217AI	NEW 104.9MHZ	HILLEBRAND BROADCASTING, INC. SANIBEL, FL	APPLICATION GRANTED TO FM BROADCAST STATION CP FOR NEW FM ON: FREQUENCY: 104.9 MHZ.; #285, ERP: 2.97 KW H&V; HAAT: 274' H&V; TL: SANIBEL BLVD. & CALDWELL AVE., SANIBEL, FL; SL/RC: T.B.D. 26 26 08 82 04 56 AMENDED-11-3-83/FILED AS OF RIGHT UNDER SEC. 73.3522 (A) <u>PUBLIC NOTICE ERRATUM: THE GRANT OF THIS APPLICATION IS</u> <u>NOT FINALIZED UNTIL THE OUTCOME OF COMMISSION DECISION OF</u> <u>THE PENDING APPLICATION FOR REVIEW IS DETERMINED, PURSUANT</u> <u>TO SECTION 1.291 (D) OF THE COMMISSION RULES.</u>
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ACTION OF : OCTOBER 3, 1986

AK BP	-840604AB	NEW 950KHZ	DENALI BROADCASTING COMPANY INC. JUNEAU, AK	APPLICATION GRANTED TO AM BROADCAST STATION CP FOR NEW AM ON: FREQUENCY: 950KHZ; PWR: 5KW, 500W; HRS OF OPER: UNL; TL: 1.5 MI SE OF STATE CAPITOL JUNEAU, AK SL&RC: TO BE DETERMINED, JUNEAU, AK 58 17 12 134 23 23
MN BPTVL	-GTO308LN	NEW CHAN-5	EVARISTA ROMERO PARK RAPIDS, MN	APPLICATN DISMISSED TO VHF TV TRANSLATOR LOW POWER BROADCAST CP FOR NEW LPTV STATION

- O V E R -

0101

**STATE OF FLORIDA
DEPARTMENT OF COMMUNITY AFFAIRS
NOTICE OF INTENT TO FIND THE
CITY OF SANIBEL
COMPREHENSIVE PLAN AMENDMENTS IN COMPLIANCE
DOCKET NO. 90-2-NOI-3604-(A)-(I)**

The Department gives notice of its intent to find the amendment(s) to the Comprehensive Plan for City of Sanibel, adopted by Ordinance No. 90-25 on December 18, 1990, IN COMPLIANCE, pursuant to Sections 163.3184 and 163.3187, F.S.

The adopted City of Sanibel Comprehensive Plan amendments and the Department's Objections, Recommendations, and Comments Report, are available for public inspection Monday through Friday, except for legal holidays, during normal business hours, at the City Hall, 800 Dunlop Road, Sanibel, Florida 33957.

Any affected person, as defined in Section 163.3184, F.S., has a right to petition for an administrative hearing to challenge the proposed agency determination that the amendment(s) to the City of Sanibel Comprehensive Plan are in compliance, as defined in Subsection 163.3184(1), F.S. The petition must be filed within twenty-one (21) days after publication of this notice, and must include all of the information and contents described in Rule 9J-11.012(8), F.A.C. The petition shall be filed with the Agency Clerk, Department of Community Affairs, 2740 Centerview Drive, Tallahassee, Florida 32399-2100. Failure to timely file a petition shall constitute a waiver of any right to request an administrative proceeding as a petitioner under Section 120.57, F.S. If a petition is filed, the purpose of the administrative hearing will be to present evidence and testimony and forward a recommended order to the Department. If no petition is filed, this Notice of Intent shall become final agency action.

If petition is filed, other affected persons may petition for leave to intervene in the proceeding. A petition for intervention must be filed at least five (5) days before the final hearing and must include all of the information and contents described in Rule 221-6.010, F.A.C. A petition for leave to intervene shall be filed at the Division of Administrative Hearings, Department of Administration, 1230 Apalachee Parkway, Tallahassee, Florida 32399-1550. Failure to petition to intervene within the allowed time frame constitutes a waiver of any right such a person has to request a hearing under Section 120.57, F.S., or to participate in the administrative hearing.

s-Robert G. Nave, Director
Department of Community Affairs
Division of Resource Planning
and Management
2740 Centerview Drive
Tallahassee, Florida 32399-2100

FLORIDA GAME AND FRESH WATER FISH COMMISSION

WILLIAM G. BOSTICK, JR.
Winter Haven

DON WRIGHT
Orlando

THOMAS L. HIRES, SR.
Lake Wales

MRS. GILBERT W. HUMPHREY
Miccosukee

JOE MARLIN HILLIARD
Clewiston

ROBERT M. BRANTLY, Executive Director
ALLAN L. EGBERT, Ph.D., Assistant Executive Director



FARRIS BRYANT BUILDING
620 South Meridian Street
Tallahassee, Florida 32399-1600
(904) 488-1900

AUG 22 1990

Mr. Robert D. Hutcherson
Morris-Depew Associates, Inc.
1940 Maravilla Avenue
Fort Myers, FL 33901

Dear Mr. Hutcherson:

Pursuant to your recent request, we have assessed the potential impacts the planned construction of a 500-foot communications tower in Lee County would have on an active bald eagle nesting territory (designated Territory LE-18a in our records) which overlaps portions of the development site. In matters such as this, we apply the precepts embodied in the publication "Habitat Management Guidelines for the Bald Eagle in the Southeast Region" (dated January 1987). The guidelines therein were jointly developed by the Game and Fresh Water Fish Commission and the U.S. Fish and Wildlife Service, primarily as a service to developers and permitting entities in complying with the various state and federal laws protecting bald eagles and/or their nests. The guidelines, in part, call for establishing two protective zones around eagle nests, a primary zone normally encompassing an area extending up to 1,500 feet outward from a given nest, but which minimally may be 750 feet outward, depending on site-specific circumstances (e.g. a demonstrated tolerance by resident birds to proximal human encroachment, the juxtapositions and proximities of nests and feeding areas, etc.), in which no development at all should occur, and a secondary zone extending an additional 750 feet to one mile outward, in which certain development is acceptable but under restricted conditions.

In this particular instance, structures such as towers are encompassed under the restrictions against "...new commercial and industrial sites..." and "...multi-story buildings...between the nest and the eagles' feeding area" in secondary zones (restrictions a[1] and a[2], respectively). Therefore, considering the planned tower is only 800 feet from the nest (with the associated guy wires encroaching considerably nearer than that), even imposing a minimum